

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN FLOYD VOSS,

Petitioner,

vs.

GREG COX, et al.

Respondents.

Case No. 3:11-CV-00223-LRH-(WGC)

ORDER

Before the court are petitioner's submitted a motion for relief from order (#48) and respondents' opposition (#49). The motion is without merit, and the court need not wait for briefing to complete before ruling upon it.

In granting respondents' motion to dismiss (#25), the court noted that petitioner had not filed a response to the motion within the time allowed by LR 7-2. Petitioner argues incorrectly that the court gave him forty-five days to respond to the motion. The court actually stated, "If respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five (45) days from the date on which the answer is served to file a reply." Order (#16) (emphasis added). Respondents did not file an answer. They filed a motion to dismiss, which is an acceptable method of raising procedural defenses. See White v. Lewis, 874 F.2d 599, 602 (9th Cir. 1989). The briefing schedule given in the court's order (#16) does not apply to a motion to dismiss. Instead, the briefing schedule given in LR 7-2 applies.

1 Petitioner next argues unpersuasively that he was unable to file a response to the motion to
2 dismiss (#25) because his access to the prison's law library is limited. He then describes a process
3 by which somebody outside of prison researches case law for him. However, respondents did not
4 present novel arguments of law in their motion to dismiss (#25). They argued that petitioner did not
5 exhaust his available state-court remedies for all of his grounds. The court's instructions for filing a
6 habeas corpus petition pursuant to 28 U.S.C. § 2254 explain the exhaustion requirement.
7 Respondents presented the law regarding exhaustion accurately and in more detail in their motion to
8 dismiss (#25). Respondents also served upon petitioner volumes of exhibits, so that petitioner could
9 determine and argue whether he had satisfied the exhaustion requirement. Petitioner had all the
10 information before him to respond to the motion to dismiss (#25).

11 IT IS THEREFORE ORDERED that petitioner's motion for relief from order (#48) is
12 **DENIED.**

13 DATED this 2nd day of December, 2011.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE